



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

April 7, 2003

Maria M. Oms
Auditor-Controller
Lloyd W. Pellman
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Metropolitan State Hospital v. Special Education Hearing
Office, et al., and Related Case**
United States District Court Case No. CV 02-8607 JFW (CWx)

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$400,000.00 (net \$200,000).
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Mental Health.

Enclosed is the settlement request and a summary of the facts of the case.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosure

MEMORANDUM

March 26, 2003

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: RICHARD K. MASON
Principal Deputy County Counsel
Public Services Division

RE: Metropolitan State Hospital v. Special Education Hearing Office, et al.,
and Related Case, U.S. District Court, Central District of California,
Case. No. CV-02-8607 JFW (CWx)

DATE OF
INCIDENT: 1997 and ongoing

AUTHORITY
REQUESTED: \$400,000 Payment (net \$200,000)

COUNTY
DEPARTMENT: Department of Mental Health

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☐

Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY ARMFIELD

_____, County Counsel
LLOYD W. PELLMAN

_____, Auditor-Controller
MARIA M. OMS

on _____, 2003

SUMMARY

This is a recommendation to settle litigation brought in federal court on behalf of Elizabeth Q., challenging the level of special education and related mental health services she is receiving. The primary defendants are Metropolitan State Hospital (MSH), the Los Angeles County Office of Education (LACOE), and the Los Angeles County Department of Mental Health (DMH).

Pursuant to the settlement, the defendants would place \$525,000 into a trust account for the plaintiff's benefit. LACOE would contribute \$125,000. The County would contribute \$400,000, but would receive rate reductions from MSH equivalent to \$200,000. Thus, the County's net contribution would be \$200,000. The County will not be responsible for plaintiff's attorney's fees.

Also pursuant to the settlement, plaintiff will transition out of MSH to an Institute for Mental Disease (IMD), Community Care Center, the cost of which will come from the trust fund established by the settlement. As the plaintiff will deal directly with the IMD, DMH will not have the responsibility or expense of administering a contract with that provider.

LEGAL PRINCIPLES

Under various state and federal laws, an individual such as Elizabeth is entitled to appropriate levels of mental health services to enable her to access, and benefit from, educational services. The ultimate goal of these services would be to allow Elizabeth to leave MSH and, after an appropriate transition, succeed in a placement in the community with substantial self-sufficiency. Under the laws, it is the responsibility of the County, through DMH, to provide the mental health services necessary to achieve this goal.

SUMMARY OF FACTS

Elizabeth is an individual who has been institutionalized for most of her life. Most recently, since 1997, she has been placed at MSH. DMH pays \$120,000 per year for Elizabeth's hospitalization at MSH and would in all likelihood be responsible for at least \$70,000 per year in the event Elizabeth is transitioned out of MSH. As background, Elizabeth was one of the key participants in a previous class action case, Emily Q. v. Bonta, which established that a certified class of children eligible for Medi-Cal benefits were denied the benefits they were entitled to under federal law.

In the current case, Elizabeth challenges the special education and related mental health services she has been receiving. Under special education law, Elizabeth was entitled to an administrative determination as to whether she was receiving the services to which she was entitled. Believing that MSH and LACOE failed in their obligations, Elizabeth initiated an administrative hearing. DMH was not a party to this administrative proceeding, since Elizabeth's advocates believed MSH and LACOE to be responsible.

After a lengthy administrative hearing, the Administrative Law Judge (ALJ) ruled entirely in Elizabeth's favor and, in a detailed opinion, ordered the parties to implement an ambitious, far-reaching, and costly program of services, over a three and a half year period. The program is designed to compensate for past insufficiencies and to enable Elizabeth to successfully transition out of MSH and into the community.

MSH and LACOE appealed the decision to the state court in two separate actions, after which Elizabeth removed the cases to federal District Court. MSH cross-complained against DMH, alleging that DMH is required to indemnify MSH for any claims based on the insufficiency of the mental health services provided to Elizabeth, and that DMH failed to carry out its obligations to Elizabeth under the Emily Q. v. Bonta order.

Elizabeth filed a motion with the District Court seeking enforcement of the ALJ's decision. Concurrently, MSH and LACOE filed motions requesting that the ALJ's decision be stayed. At an initial hearing on these motions, U.S. District Court Judge John F. Walter made clear his general support for Elizabeth's case, and his indifference to the possible cost of the implementation of the transition plan ordered by the ALJ. At that hearing, but before the Judge made his ruling, the parties agreed to take the matter to mediation. Consequently, the Judge took the motions under submission and allowed the parties an opportunity to mediate.

DAMAGES

The parties are not in agreement as to the costs of implementing the ALJ's order, but agree that they could easily exceed \$1,000,000, and possibly be as much as \$1,800,000. DMH's net payment of \$200,000 is not significantly greater than its obligations for Elizabeth's current hospitalization at MSH, or for reasonable transition costs over a year or two.

DMH would probably not be liable for attorney's fees for the administrative hearing. However, MSH would contend that DMH's alleged failures led to the unfavorable ALJ ruling and seek a County contribution towards those fees. Additionally, if the settlement is rejected and attorney's fees are awarded for court proceedings, DMH would likely be required to pay a portion.

STATUS OF CASE

The case is currently dismissed by the federal court, without prejudice, to allow the parties to finalize their settlement. In the event settlement is rejected, all parties would return to court, where it would be extremely likely that the court would issue a preliminary injunction to have the ALJ's transition plan implemented.


EVALUATION

DMH is very satisfied with the settlement as it transitions Elizabeth out of MSH, where DMH is currently paying \$120,000 per year for her. DMH would incur significant costs and responsibilities for her in the event a transition plan had been developed apart from the litigation,

or if the ALJ's plan is implemented. Additionally, the settlement removes DMH from ongoing involvement in Elizabeth's transition. If Elizabeth's transition, as set forth within the parameters of the settlement terms, fails, it is probable that she will be placed through a Regional Center. DMH would be responsible for ongoing Medi-Cal entitlements.

Thus, while DMH has a strong argument that it is not responsible for indemnifying MSH for the claims arising from the mental health services, there is a risk that the Court would not agree with that position. And, the attorney's fees necessary to defend that position would be significant. The settlement eliminates the risks and removes DMH from the costs and responsibilities of administering a transition. Additionally, the overall cost of the settlement to the County is not significantly beyond what County would be responsible for in the absence of litigation and, with the settlement, the money is being utilized to provide the plaintiff with services to which she is entitled as opposed to litigation costs.

APPROVED:



LEELA A. KAPUR
Assistant County Counsel